

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

CORIANTE L. PIERCE,)	
)	
Petitioner,)	
)	
v.)	1:20CV712
)	
SHERIFF CLARENCE F. BIRKHEAD,)	
)	
Respondent.)	

ORDER

This matter is before this court for review of the Order and Recommendation ("Recommendation") filed on December 1, 2020, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 7.) In the Recommendation, the Magistrate Judge recommends that this action be dismissed sua sponte without prejudice to Petitioner filing a new petition which corrects the defects of the current petition. The Recommendation was served on the parties to this action on December 2, 2020. (Doc. 8.) On December 28, 2020, Petitioner filed a letter requesting an extension to respond to the Recommendation, (Doc. 9); objections to the Recommendation, (Doc. 10); a request for a certificate of appealability, (Doc. 11); and a premature Notice of Appeal, (Doc. 12), which the court will construe as objections to the Recommendation. The court will grant Petitioner's motion for

extension of time and will treat Petitioner's objections as timely filed.

The court notes that Petitioner stated in his objections that he did not receive forms and instructions from the Clerk's Office, as directed in the Recommendation. Therefore, the court will direct the Clerk to re-send Petitioner § 2241 forms, instructions, and a current application to proceed in forma pauperis.

Petitioner has also requested a certificate of appealability. However, at this point, the court has only directed Petitioner to clearly re-state his claims on the proper § 2241 forms. There being no substantial issue for appeal concerning the denial of a constitutional nor a debatable procedural ruling, Petitioner's request for a certificate of appealability will be denied.

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions." Id.

This court has appropriately reviewed the portions of the Recommendation to which objection was made, has made a de novo determination which is in accord with the Magistrate Judge's Recommendation, and finds Petitioner's objections do not change the substance of the Recommendation, (Doc. 7). This court therefore adopts the Recommendation.

IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendation, (Doc. 7), is **ADOPTED. IT IS FURTHER ORDERED** that this action is dismissed without prejudice to Petitioner filing a corrected petition on the proper § 2241 forms. There being no substantial issue for appeal concerning the denial of a constitutional right nor a debatable procedural ruling, a certificate of appealability shall not issue and Petitioner's Request for a Certificate of Appealability, (Doc. 11), is **DENIED.**

IT IS FURTHER ORDERED that Petitioner's motion for extension of time, (Doc. 9), is **GRANTED** and that Petitioner's objections, (Doc. 10), are deemed timely filed.

IT IS FURTHER ORDERED that the Clerk is directed to re-send Petitioner § 2241 forms, instructions, and a current application to proceed in forma pauperis.

A Judgment dismissing this action will be entered contemporaneously with this Order.

This the 30th day of April, 2021.

William L. Ostun, Jr.
United States District Judge